

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAMON MARTINEZ,
Petitioner,
v.
D. BREWER,
Respondent.

No. 2:23-00707-EFB (HC)

ORDER AND FINDINGS &
RECOMMENDATIONS

Petitioner is a prisoner proceeding with a writ of habeas corpus pursuant to 28 U.S.C. § 2241. On July 12, 2023, respondent filed a motion to dismiss the petition. ECF No. 8. The court has twice ordered petitioner to respond to the petition, but petitioner has not done so and the time for filing a response has passed. ECF Nos. 9, 13.

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion” “Failure to follow a district court’s local rules is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Pro se litigants are bound by the rules of procedure, even though pleadings are liberally construed in their favor. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987); *Jacobsen v. Filler*, 790 F.2d 1362, 1364-65 (9th Cir.1986).

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1 In determining to recommend that this action be dismissed, the court has considered the
2 five factors set forth in *Ghazali*, 46 F.3d at 53. Petitioner's failure to oppose respondent's motion
3 has impeded the expeditious resolution of the instant litigation and has burdened the court's
4 docket, consuming scarce judicial resources in addressing litigation which petitioner demonstrates
5 no intention to pursue. Although public policy favors disposition of cases on their merits,
6 petitioner's failure to oppose the pending motion has precluded the court from doing so. In
7 addition, respondent is prejudiced by the inability to reply to opposition. Finally, the court has
8 repeatedly advised petitioner of the requirements under the Local Rules and granted ample
9 additional time to oppose the pending motion, all to no avail. The court finds no suitable
10 alternative to dismissal of this action.

11 IT IS HEREBY ORDERED that the Clerk of Court randomly assign a district judge to
12 this action.

13 IT IS FURTHER RECOMMENDED that the petition be dismissed for failure to
14 prosecute. Fed. R. Civ. P. 41(b).

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
20 objections shall be filed and served within fourteen days after service of the objections. The
21 parties are advised that failure to file objections within the specified time may waive the right to
22 appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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24 Dated: January 29, 2024


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE